IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1637 OF 2002

Karuna @ Karunakaran .. Appellant

-Vs-

State
rep. By the Inspector of Police L&O,
R-3, Ashok Nagar Police Station
Crime No.1099 of 1995 .. Respondent

This Criminal appeal is preferred under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence of the learned I Additional Sessions Judge at Chennai in S.C.No.515 of 2000 dated 12.11.2002 .

!For Appellant : Mr.Ganesh Rajan

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

Challenging the judgment rendered by the First Additional Sessions Judge, Chennai made in S.C.No.515 of 2000, wherein the appellant stood charged, tried, found guilty under Sections 307 and 506(ii) I.P.C. and sentenced to undergo RI for 5 years and to pay a fine of Rs.2000/- in default to undergo SI for three months for the offences under Section 307 I.P.C. and to undergo RI for two years for an offence under Section 506(ii) I.P.C, this appeal has been filed.

2. Though charge sheet was filed against four accused, one accused, namely, Prabha @ Prabhakaran died and the other two accused were absconding and the case was split up and proceeded against this accused/ appellant herein.

3. The short facts necessary for the disposal of this appeal can be stated as follows:

a) The first accused/appellant herein and the second accused are brothers, while the 3rd and 4th accused were their close associates. P.W.1, A1 and A2 were living in the same area and enmity was prevailing between them in respect of a murder of one George, who was related to the accused Nos.1 and 2. On 28.7.1995 at about 6.30 p.m., while P.W.1, Anandan was standing with his friend and taking tea in front of a shop in Kamaraj Salai, Ashok Nagar, the appellant/first accused along with three others armed with deadly weapons

and in furtherance of their common intention to commit murder of P.W.1 came there. The deceased, namely, Prabhakaran slapped P.W.1 with hand on his face threatening him with dire consequences. While P.W.1 tried to escape, the appellant and three other accused assaulted him and inflicted injuries on his hip with knife and abused him in filthy language. P.Ws.2 to 4, who were in the house nearby, on information came out and found that P.W.1 was attacked by the accused, and thus, P.Ws.2 to 4 witnessed the occurrence. On seeing the crowd, the accused also threatened them with dire consequences by showing knife and so saying fled away from the place of occurrence.

b) P.W.1 was taken to Royapettah hospital with grievous injuries he sustained. Initially, he was treated by the medical officer in the Royapettah Hospital. From Royapettah Hospital P.W.1 was taken to K.K. Nagar Government Hospital, where P.W.6, Dr.Balan examined him and gave treatment. His sister Saraswathi has stated to the Doctor that P. W.1 was assaulted by four persons on 28.7.1995 at about 6.30 p.m. near Navuran Shop, Ashok Nagar and the same was recorded by P.W.6. In respect of the wounds found, a wound certificate was issued by P.W.6, which was marked as Ex.P.4 and all the injuries found were narrated by P.W.6 in the wound certificate. On receipt of information through telephone, P.W.8, Sub Inspector of Police attached to R3 Ashok Nagar Police Station proceeded to K.K.Nagar hospital, where he was informed that P.W.1 Anandan was referred to Royapetah Government Hospital for further treatment. Then, he proceeded to Royapettah Government Hospital and recorded a statement from P.W.1. On the basis of which, he prepared Ex.P.7 F.I.R., which was sent to Court. A case was registered in Crime No.1099 of 1995 under Sections 323, 307 and 506(2) I.P.C. P.W.8 took up investigation, proceeded to the place of occurrence, prepared Ex..8 Observation Mahazar and Ex.P.9 rough sketch. He recovered blood stained skirt and pant, which were marked as M.Os.1 and 2 respectively. He handed over the records to P.W.9, the Inspector of Police for further investigation. P.W.9 took up further investigation and recorded the statements of the witnesses.

c) On 1.8.1995 at about 4.10 am, P.W.9 arrested the accused/ appellant at 86th street and 100ft. road junction at Ashok Nagar and he volunteered to give a confessional statement in the presence of the witnesses, namely, P.W.5 and one Munusamy. The admissible portion of the confessional statement was marked as Ex.P.2. Pursuant to the confessional statement, the accused produced M.Os.3 and 4, patta knives, which were marked under Ex.P.3, Mahazar in the presence of P.W.5 and Munusamy. On completion of the investigation, P.W.9 filed a charge sheet against the accused/appellant and three others.

4) In order to prove charges levelled against the accused, the prosecution examined 9 witnesses and marked 9 exhibits and 4 M.Os. While the accused/appellant was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, he flatly denied the same as false. No defence witnesses were examined. After considering the rival submissions and scrutiny of the materials available, the trial court found the accused guilty under Sections 307 and 506(ii) I.P.C. and sentenced him to undergo imprisonment as stated above. Aggrieved first accused has brought forth this appeal.

5. Advancing arguments on behalf of the appellant, the learned counsel with vigour and vehemence raised following points:

The case against the appellant/accused was not at all proved by the prosecution beyond reasonable doubt. Even P.W.1, who according to the

prosecution was injured and was the author of the complaint, has turned hostile. He has clearly spoken to the fact that he made his signature in a blank paper and the same was filled up as complaint, and thus, the F.I.R. relied on by the prosecution lost his significance. P.W.2 has also turned hostile. From their evidence it would be clear that the prosecution story was nothing, but false. According to P. W.3, he was staying back at his house even after the occurrence was over. The conduct of P.W.2 at the given circumstances would be opposed to the conduct of a reasonable person, since she has not preferred any complaint. According to the prosecution case, P.W.3 and P.W.4 were eye witnesses, but lot of contradictions were found and if both were put together, it would be nothing but discrepant evidence. At the time of cross examination, P.W.4 has admitted that she went to the scene of occurrence after the occurrence was over, and thus, this evidence should have been rejected by the lower court. The lower court has much relied on the arrest and the confessional statement of the accused and the recovery of M.Os.3 and 4, knives. The only witness to prove the said fact was P.W.5. From his evidence, it would be clear that he has not witnessed the actual recovery of M.Os., and hence, no credence could have given to his evidence. In a case like this, where the victim himself has not identified the accused or weapon used at the time of occurrence, it was a fit case for the acquittal, which the lower court has failed to do so and on the evidence available, the lower court should have rejected the case of the prosecution, and hence, the accused is entitled to for acquittal in the hands of this Court.

6. Added further the learned counsel for the appellant that this Court if accepts the prosecution case, can exercise leniency by setting him free at this stage, since he served sentence for three years and eight months now.

7. Countering to the above contentions on the appellant□s side, the learned Government Advocate would submit that it is true that P.W.1, who was attempted to be murdered and P.W.2, eye witness have turned hostile, but their evidence was available to the prosecution to the extent that there was an occurrence that took place at the time and place as alleged by the prosecution, in which P.W.1 sustained grievous injuries; that P.Ws.2 and 3, who are the eye witnesses, have given cogent evidence; that P.W.1 has admitted his signature in the complaint given by him; that there is nothing to suspect the evidence of the Police officer, who recorded the statement of P.W.1 in the hospital; that based on the complaint given by P.W.1, a case has been registered ; that on a careful reading of the evidence of P.Ws.2 and 3, who are the eye witnesses, it would be clear that they have witnessed the occurrence, without which they could not give a clear narration of the facts and circumstances; that pursuant to the confessional statement made by the appellant, M.Os. were recovered; that the same was stood as a strong piece of evidence to prove the prosecution case; that the medical evidence projected by the prosecution through P.Ws.6 and 7, who gave treatment to P.W.1, was fully corroborated by the ocular evidence adduced by the prosecution, and hence, under the stated circumstances, the lower court was perfectly correct in rejecting the contentions of the appellant and the judgment of the lower court has got to be sustained.

8. After careful consideration of the rival submissions and close scrutiny of the materials available, this Court is unable to see any substance in this appeal. The prosecution case was that the occurrence has taken place

on 28.07.1995 at about 6.30 p.m. in front of a tea shop situated at Kamaraj Salai, Ashok Nagar. The accused/appellant was ranked as A1 along with three others, of whom, the third accused died and the other two accused were absconding. The appellant/first accused along with three others armed with deadly weapons came there in order to carry out their common intention to commit murder of P.W.1. From the available evidence, it cannot be disputed that such an occurrence has taken place at 6.30 p.m. at the place and time as averred by the prosecution and P.W.1 was severely injured. P.W.1, who was injured and the author of the complaint, has turned hostile. P.W.2, who was an eye witness, has also turned hostile. But, their evidence, as rightly pointed out by the lower court, was available to the prosecution to the extent that the occurrence has taken place at the place and time and P.W.1 was attacked with deadly weapons and injuries were caused to him. P.Ws.1 and 2 have not identified the assailants. But, a careful scrutiny of the evidence of P.Ws.3 and 4 would clearly indicate that their evidence was cogent and acceptable. This Court is unable to notice any reason or circumstance to reject their evidence because of the reason that they happened to be the relatives of the victim, P.W.1. It is the rule of law that a careful scrutiny of the evidence has got to be exercised and on the ground of relationship alone it cannot be rejected. Hence, on careful scrutiny of the evidence, this Court is of the considered view that the evidence of P.Ws.3 and 4 has inspired the confidence of the court, and hence, their evidence has been rightly relied on by the court below. Both the witnesses, namely, P.Ws.3 and 4 have clearly pointed out the overtacts committed by the accused at the time of occurrence, and thus, their evidence is free from any doubt and suspicion.

9. The prosecution has adduced medical evidence through P.W.7, who gave treatment initially and P.W.7 who gave subsequent treatment and wound certificate has also been marked. From the evidence of medical persons, it would be quite clear that the injuries found on the body of P.W.1 would have been caused by the weapon, like M.Os.3 and 4. Thus, the ocular evidence projected by the prosecution through P.Ws.3 and 4 has been fully corroborated by the evidence of P.Ws.6 and 7. Apart from that, the prosecution has also relied on the evidence of P.W.5, the mahazar witness, in whose presence the confessional statement of the appellant/accused was recorded. Pursuant to which, the accused produced two knives. A perusal of the evidence of P.W.5 in respect of the arrest and the confessional statement given by the appellant and recorded by the Investigating Officer, it would be clear that it is intact. The learned counsel for the appellant wanted to stress on the evidence of P.W.5 stating that he was standing outside the burial ground and the Investigating Officer took the accused inside the burial ground and both knives were produced, and hence, that part of the recovery has got to be disbelieved. This Court is unable to agree with the contention of the learned counsel for the appellant for the simple reason that only pursuant to the confessional statement made by the accused and recorded by the Investigating Officer, it was the accused, who took the Investigating Officer to the burial ground and produced the knives and P.W.5 was standing nearby, but not away therefrom and it cannot be a reason to reject such a recovery, while it was proved by a clear evidence. Thus, the prosecution has proved the case not only by adducing ocular evidence, which was fully corroborated by the medical evidence, but also from the evidence of P.W.5. This court without any hesitation whatsoever has to hold that the accused has committed the said

crime. In the instant case, the lower court has also pointed out that only with an intention to commit murder, the first accused along with other accused have assaulted P.W.1 with patta knives and caused grievous injuries. From the available evidence, it would be clear that the accused made criminal intimidation at the time of occurrence. This Court is unable to notice any reason to interfere in the findings of the lower court.

10. Coming to the question of sentence, the learned counsel for the appellant asked for leniency to the accused, since he served sentence for three years and eight months now. It was a case under Section 307 I.P.C. where the lower court has convicted the accused and sentenced to undergo RI for 5 years. The lower court has also pointed out that during the pendency of trial, the accused has threatened the witnesses in the court campus and a case in that regard has also been registered by the concerned police and the same is also pending. Taking into consideration of the facts and circumstances of the case, no leniency could be shown to the accused. This Court is of the view that there is nothing to interfere either in the conviction or in the sentence awarded by the lower court. This criminal appeal fails and the same is dismissed.

Index : Yes
Internet : Yes

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To
1. The I Addl. Sessions Judge, Chennai
2. The I Addl. Sessions Judge, Chennai
through the Principal Sessions Judge, Chennai
3. The Superintendent, Central Prison, Vellore
4. The Public Prosecutor, High Court, Chennai
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. side)
High Court, Chennai
7. The Inspector of Police, R3 Ashok Nagar Police Station
Chennai